IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WA.No. 210 of 2004

AGAINST THE JUDGEMENT IN WP(C).40029/2003 Dated 19/12/2003

APPELLANTS: PETITIONERS
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1. SUJA RAJU, W/O. RAJU JOSEPH,
   AGED 38 YEARS, EXCEL PARK, STP ROAD,
   ELAMKULAM, ERNAKULAM.

2. RAJU JOSEPH, S/O. JOSEPH,
   AGED 46 YEARS, EXCEL PARK, STP ROAD,
   ELAMKULAM, ERNAKULAM.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS: RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE
   SECRETARY TAXES, SECRETARIAT, TRIVANANTHAPURAM.

2. THAHASILDAR, KANAYANNUR TALUK, ERNAKULAM.

3. THE VILLAGE OFFICER, ELAMKULAM VILLAGE,
   ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 210 OF 2004

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Dated this the 22nd June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Questioning the correctness or otherwise of the judgment delivered by the learned single Judge in W.P.(C) 40029 of 2003 dated 19th December, 2003, the petitioners are before us in this Writ Appeal.

2. In the Writ Petition, the petitioners had questioned the constitutional validity of Section 5A of the Kerala Building Tax Act and also the orders of assessment passed by the assessing authority under the aforesaid provision.

3. Section 5A of the Kerala Building Tax Act is now held to be intra vires of the Act by a Division Bench of this Court in the case – **Sudhakaran vs. State of Kerala (2004 (2) KLT 706).** In view of the law declared by this court, in our opinion, the learned single Judge is justified in rejecting the Writ Petition, in so far as the validity or otherwise of Section 5A of the Act is concerned.

4. In so far as the orders of assessment passed by the assessing authority, the learned single Judge has observed as under:

> *"If the petitioner makes a request before the second respondent for measurement of the building by an Engineer of the Public Works Department, the second respondent will arrange for the measurement with the assistance of an*

Assistant Executive Engineer of the Public Works Department having jurisdiction over the said area. However, in case it turns out that the actual is anywhere near the measurement adopted by the second respondent, the petitioner has to bear the cost of the measurement by the Assistant Executive Engineer and the Tahsildar will intimate the cost in such an event. The petitioner will also be heard in the matter after measurement. "

5. The direction issued by the learned single Judge, in fact, is in favour of the petitioners. Therefore, the petitioners cannot be said to be aggrieved persons against the directions and orders issued by the learned single Judge.

6. In that view of the matter we are of the opinion, this Writ Appeal is devoid of merit and it requires to be rejected. Accordingly, Writ Appeal is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK